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IN THE

United States Court of Appeals
for the District of Columbia Circuit

No. 9854.

RICHARD MORFORD, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX.

I.

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

629 Filed March 31, 1947

The Indictment.

District Court of the United States for the District of Columbia

Holding a Criminal Term

January Term, 1947

Criminal No. 366-47

Grand Jury Original

Violation 192, Title 2 U. S. C.

(Contempt of House of Representatives)

UNITED STATES OF AMERICA

v.

RICHARD MORFORD

The Grand Jury charges:

Pursuant to House Resolution 5 of the House of Representatives of the United States, 79th Congress, dated January 3, 1945, including the rules of Congress therein adopted and amended, the House of Representatives was empowered to and did create the Committee on Un-American Activities, having duties and powers as set forth in said Resolution

Richard Morford was summoned as a witness by authority of the House of Representatives, through its Committee on Un-American Activities, to produce before the said Committee records upon the matter under inquiry committed to said Committee by the Resolution aforesaid, that is to say,

all books, records, papers and documents showing all the receipts and disbursements of money by the National Council of American-Soviet Friendship, Inc., and all correspondence, memoranda and communications with any and all persons, together with a complete list of all affiliated organizations, for the year 1945. He appeared before the said Committee at its session in the District of Columbia on March 6, 1946, but then and there refused to produce the said records upon the matter under inquiry, and thereby wilfully made default.

630 Second Count:

The Grand Jury charges:

That Richard Morford, having appeared before the Committee on Un-American Activities of the House of Representatives on March 6, 1946, under the circumstances set forth in the first count of this indictment, the allegations concerning which are incorporated into this count, was asked by the Committee who were the members of the publications committee of the National Council of American-Soviet Friendship, Inc., which prepared and edited a publication known as "Reporter", which question was pertinent to the inquiry which the Committee on Un-American Activities was then conducting, pursuant to the Resolution mentioned in the first count; and Richard Morford refused to answer that question.

GEORGE MORRIS FAY,
Attorney of the United States in and for the District of Columbia.

A True Bill:

HELEN M. HOFFMAN,
Foreman.

* * * * * * * * * *

631 Filed May 5 1947

Motion to Dismiss Indictment, or, in the Alternative, for a Bill of Particulars.

The defendant moves that the indictment be dismissed on the following grounds:

1. The indictment is fatally vague, uncertain, and indefinite, in that:

a. The first count does not show that the documents allegedly summoned or subpoenaed were material to the matter under inquiry, nor does it set forth the facts upon which such materiality is based.

b. The second count does not set forth the facts upon which it is alleged that the question allegedly asked of the defendant was pertinent to the question under inquiry.

c. The second count shows neither the precise question allegedly asked nor the precise manner in which the defendant allegedly refused to answer.

2. The first count of the indictment is fatally defective in that it is based upon an invalid summons or subpoena to produce documents.

3. The indictment does not state an offense against the United States in that the scope of the investigation committed to the House Committee on Un-American Activities by House Resolution 5 of the 79th Congress is not
632 judicially ascertainable and the pertinency of any question or document is not determinable by the Court.

4. House Resolution 5 of the 79th Congress, as construed and applied, in conjunction with Section 192 of Title 2 of the U. S. Code and Section 192 of Title 2 of the U. S. Code as applied does not provide the ascertainable standard of guilt required by the Fifth and Sixth Amendments to the U. S. Constitution.

5. The indictment does not state an offense against the United States in that the scope of the investigation com-

mitted by the 79th Congress to the Committee on Un-American Activities in House Resolution 5 is indefinable and so indefinite and sweeping that the attempts of the Committee on Un-American Activities to compel the defendant under the threat of criminal prosecution to produce the documents referred to in the first count of the indictment and to answer the question referred to in the second count of the same, are beyond the constitutional powers of Congress.

In the alternative, the defendant moves for an order, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, directing the United States of America to furnish a bill of particulars with respect to the following matters alleged in the indictment:

With Respect to the First Count:

1. State the matter that was under inquiry at the March 6, 1946 session of the Committee on Un-American activities and specify in what particular or particulars the documents called for by the summons or subpoena were material to the matter under inquiry.

2. State the questions and answers upon the basis of which it is alleged that the defendant was requested to produce the documents and refused so to do.

633 With Respect to the Second Count:

3. State the matter that was under inquiry at the March 6, 1946 session of the Committee on Un-American activities and specify in what particular or particulars the question or questions propounded to the defendant which he is alleged to have refused to answer were pertinent to the question under inquiry.

4. State the questions and answers upon the basis of which it is alleged that the defendant refused to answer a question or questions pertinent to the inquiry.

CHARLES A. HORSKY,
Counsel for the Defendant.

May 5, 1947

634 Filed May 7, 1947

Bill of Particulars

Responding before argument to certain portions of the motion for bill of particulars filed herein on May 5, 1947, the United States Attorney states as follows:

1. (First part of paragraph 1, page 2 of motion). The matter under inquiry before the Committee on Un-American Activities of the House of Representatives at the time the defendant was summoned and appeared as alleged, was that part of the matter which related to the National Council of American-Soviet Friendship, Inc., and organizations affiliated therewith and individuals connected therewith.

2. (Paragraph 2, page 2 of motion). The questions and answers upon which is based the allegation that the defendant refused to produce the records he was summoned to produce when he appeared before the Congressional Committee in the District of Columbia on March 6, 1946, are some or all of the questions, answers and proceedings relating to that subject which occurred on that occasion. A transcript of all these questions, answers and proceedings will be furnished to the defendant within ten days of the filing of this bill.

3. (Paragraph 3, page 3 of motion). The matter under inquiry at the March 6, 1946, session of the Committee on Un-American Activities was that part which related to the National Council of American-Soviet Friendship, Inc., and organizations affiliated therewith and individuals connected therewith.

635 4. The questions and answer upon which is based the allegation that the defendant refused to answer the question described in the second count of the indictment when he appeared before the Committee on Un-American Activities on March 6, 1946, in the District of Columbia, are some or all of the questions, answers and proceedings relating to that subject which occurred on that occasion. A transcript of these questions, answers

and proceedings will be furnished to the defendant within ten days of the filing of this bill.

GEORGE MORRIS FAY,
United States Attorney.
CHARLES B. MURRAY,
Assistant United States Attorney.

* * * * * * * * * *

636 Filed May 16, 1947

Supplement to Bill of Particulars

Pursuant to the undertaking of the United States Attorney in his Bill of Particulars filed herein on May 7, 1947, I have this 16th day of May, 1947, sent by official United States Mail to Charles A. Horsky, Esquire, attorney for the defendant, at his address Union Trust Building, Washington 5, D. C., the transcript of questions, answers and proceedings mentioned in Paragraph Two of said Bill of Particulars consisting of seven pages, an exact copy of which is attached hereto marked "Ex. A"; and the transcript of questions, answers and proceedings mentioned in Paragraph Four of said Bill of Particulars consisting of nine pages, an exact copy of which is attached hereto marked "Ex. B".

CHARLES B. MURRAY,
Assistant United States Attorney.

* * * * * * * * * *

637 **Exhibit A** 901-902

Mr. Adamson. Now, Mr. Marford, I believe you were served with the subpoena on February 11th in New York City at your office, and I think you asked for an adjournment of your appearance to this date. Is that correct?

Mr. Marford. That is correct.

Mr. Adamson. And the committee granted your request for the adjournment?

Mr. Marford. That is right.

The Chairman. He is here now in response to the subpoena?

Mr. Adamson. He is here in response to the subpoena, yes. The subpoena was served by John W. Carrington, Clerk of this committee, on February 11, 1946, at 3:30 p. m., Mr. Marford, the witness, who is now here, at his office in New York City, and the subpoena commanded Mr. Marford to appear and produce all books, records, papers and documents showing all the receipts and disbursements of money by the National Council of American-Soviet Friendship, Inc., and all correspondence, memoranda, communications with any and all persons, together with a list, a complete list of all affiliated organizations for the year 1945. I now offer this subpoena for the record.

The Chairman. It will be received.

(The subpoena referred to follows:)

* * * * * * * * *

638 Mr. Adamson. Now, Mr. Marford, have you produced for the inspection of this committee, the books, papers and records and documents and any other material that may be relevant here at this time? 903

Mr. Marford. Yes, sir, and I am prepared to offer still further material, material that we consider relevant to the basis of the inquiry upon what this committee operates (producing papers).

Mr. Adamson. Tell us what you have produced at this time.

Mr. Marford. The material has already been introduced, and you have, I judge, not yet made a part of the record the fact that we did offer material concerning our activities before, a full list of which was prepared and is now prepared, to indicate the material that has been submitted to this committee. Have you yet made that a part of the record that this material is in your hands, sir?

Mr. Adamson. Mr. Marford, you understand, do you not, that Mr. Lamont appeared down here and refused

to produce any further books, papers or records, other than the copies of the publications which your council has made public?

Mr. Marford. I am aware that the publications were offered to you, sir.

Mr. Adamson. We have that.

Mr. Marford. And you indicated that you had received and that examination had been made of those materials, and I come today to offer you additional material that has to do with the activities of the organization. 639 904

Mr. Adamson. Very well, suppose you recite to us now what you have produced here today, so that we can determine whether or not you have complied with the subpoena.

The Chairman. Why don't you give the list of the contributors in 1945?

Mr. Marford. I would like to indicate what I am prepared to offer in meeting what appears to us to be the legitimate demands of this committee for the record of its activities, and I want to enter that, sir.

Mr. Adamson. The committee will decide whether or not you have complied with the subpoena, if you will be good enough to indicate what you have.

Mr. Marford. I will indicate the materials that I am prepared to supply; then you can use your own judgment about it. I want to supply you with a record of the speeches that were made at the dinner occasion under the auspices of the National Council, February 21, 1946, and in further corroboration of that event, in terms of the newspaper clippings that are the result of that occasion. Then this other material was offered to you for your examination, we have a bulletin of the Committee on Education that I want to place in your hands; the proceedings of the American-Soviet Building Conference of last spring-time, that I should like further to offer to the committee. 640 905

Mr. Mundt. Is that all you have?

Mr. Marford. That is the additional material since this other material was offered to you.

The Chairman. None of that material, Mr. Marford, was called for by the subpoena. Specifically, first are the books, records and papers and documents showing the receipts for 1945. Have you got that?

Mr. Marford. No, I came to try to explain to you, sir, the basis on which we are submitting the material to you. We have offered the material.

The Chairman. Have you got the list of your contributors for 1945, showing the amount of each contribution?

Mr. Marford. I want to explain to you our position in the matter. I am under directions from our Board to protect against unwarranted encroachments the records which are the internal affairs of our organization, and which by no remote consideration could be considered propaganda activities; certainly could not be counted un-American or subversive activities, and therefore my responsibility as an officer of this organization is to protect these records against what appears to be an irrelevant request, which is my responsibility, and it seems to me yours to hear the explanation I am prepared to make.

The Chairman. I will ask you again, are
641 you prepared now to disclose to this commit- 906
tee the list of your contributors for the year 1945 to the National Council of American-Soviet Friendship, Incorporated?

Mr. Marford. The terms of the resolution under which you operate——

The Chairman (interposing). I didn't ask you that. I just asked if you are prepared to present that list. That is a simple question. You can answer that "yes" or "no".

Mr. Mundt. You must know whether you have got them here or not, whether you brought them.

The Chairman. Have you got that list here ready to turn over to this committee?

Mr. Marford. I am protecting the records of my organization against unwarranted encroachment.

The Chairman. I just asked if you are prepared now to produce the records in conformity with the subpoena?

Mr. Marford. These records do not appear to be here, sir.

The Chairman. You have such records?

Mr. Marford. The records are in my custody in the office of the Council, yes, sir.

The Chairman. Very well, are you prepared now to produce today, in conformity with this subpoena, all the books, records and documents showing disbursements of money for the year 1945, of the National Council of Soviet-American Friendship?"

Mr. Marford. We believe that this material is outside the proper scope of your investigation. 642 907

The Chairman. I understand, but I didn't ask you that.

Mr. Marford. That is my reply.

The Chairman. I just asked if you have got them here ready to produce to this committee in conformity with the subpoena. That is a simple question. You know whether you have got them or not.

Mr. Marford. I am trying to make an explanation to you, sir.

The Chairman. You have already made the explanation, and I give you permission to do that. Now, I want you to answer the question, have you got them in conformity with the terms of this subpoena?

Mr. Marford. I have not the records here.

The Chairman. You have such records?

Mr. Marford. I have such records, sir.

The Chairman. Now, I will ask you whether or not you have got and are prepared to produce all your corerspondence, memoranda and communications with any and all persons, together with a complete list of your subsidiary organizations?

Mr. Marford. No, because we count this a completely unreasonable request, and without the terms of the reso-

lution under which this committee acts. As a practical matter, I do not have those records at the moment.

The Chairman: You have them in your possession?

643 Mr. Marford. They are at the office. 908

The Chairman. I will ask you one further question. If one of our investigators should come to your office in New York City, thereby saving you the burden and inconvenience of producing them and bringing them here, will you permit him to see them?

Mr. Marford. It would be still my responsibility not to permit him to investigate those records.

The Chairman. I didn't ask you about responsibility, I asked you if you would permit him to investigate those records.

Mr. Marford. I would not permit him to do that.

The Chairman. That is all, so far as I am concerned.

644 **Exhibit B** 914

Mr. Adamson. I should like to quote a couple of lines here. You have a publication that is called "The Reporter"? Is that right?

Mr. Marford. Yes, sir.

Mr. Adamson. And that is sort of a regular publication issued at regular intervals?

Mr. Marford. Yes, sir.

Mr. Adamson. On October 15, 1945, in discussing the procedural discussions at meetings between the three great powers, that is, Great Britain, the United States and Russia, your bullein goes on to say: "The Soviet case, even on the issue of procedure, stands out far better than the position of the United States." Does that, to your mind, suggest that your Reporter takes any attitude as between the position of the United States and the position of the Soviet Government? Let us get our standard of measurement here on your judgment.

Mr. Marford. I would recognize that opinion as an opinion that is based upon facts that have been considered by the committee responsible for that publication.

Mr. Adamson. In other words, your office, and at least the persons who are responsible for the preparation of the material for this Reporter, felt when that was written that Soviet Russia was right and the United States Government was wrong in the dispute? Is that correct?

Mr. Marford. Let me see.

Mr. Adamson. Well, I have a complete digest of all your publications.

645 Mr. Marford. Of course, I appreciate that. 915

Mr. Adamson. That was the issue of October 15th. Now, I just want your opinion as to whether or not you consider that to be an expression of the attitude on the part of your Council, the National Council, not your legal counsel.

Mr. Marford. Well, we believe that on the basis of fact it is quite within the rights of the Council to draw an opinion. I am answering on a question of my knowledge of what was done.

Mr. Adamson. In other words, you feel that the Council has taken, and has a right to take, a position hostile to the attitude of the United States Government, and frendly to the position of the Soviet Government? Is that correct?

Mr. Marford. That is not correct, and that may not be implied from that kind of statement.

Mr. Adamson. Let me read it again, only a few words: "The Soviet case, even on the issue of procedure, stands up far better than the position of the United States."

Mr. Marford. You see, you are taking it out of context. That is the reason I would like to read from the copy of it. Is is only a question of procedure that is involved, and that has nothing to do with attacking a system.

Mr. Adamson. If that statement appears in your Reporter as I have read it, then would you say that that was an expression of position on the part of the National Council?

646 Mr. Marford. Well, that is a publication of 916
the National Council. We do not necessarily have to stand for every word that may be uttered in that publication.

Mr. Adamson. Who prepared this bulletin called "The Reporter?"

Mr. Marford. That is the responsibility of our publications Committee.

Mr. Adamson. Who is the committee?

Mr. Marford. Now you are moving in an area in which you are asking about the internal structure and operations of our organization, and that is a point which I have indicated to you goes beyond the scope of your committee.

Mr. Mundt. Do you know who edits the Reporter? Do you know, and don't want us to know who edits the Reporter?

Mr. Marford. I don't want to answer, because that is a matter that is beyond the scope of your investigation, according to our judgment.

Mr. Mundt. A question of any investigatory scope at all certainly would attach itself to the editor of a publication, about the wisdom of statements of which we have doubts. Certainly, if we have any investigatory powers at all, we would want to know who is responsible for statements that are un-American, if they are so demonstrated to be.

647 Mr. Marford. If it is true that your inves- 917
tigatory powers enable you to move in to ask for the total information concerning the internal structure and operations of our organization, it is at that point that I have indicated to you that we feel that it is outside the proper scope of your operations in terms of your authority by Congress to investigate un-American propaganda activities.

Mr. Adamson. We are getting off the track. I ask you, did you write it?

Mr. Marford. This is October 15th. I did not write it.

Mr. Adamson. Do you write them now?

Mr. Marford. I do not write the material for the Reporter.

Mr. Adamson. All right, then, who is responsible for the preparation and publication of the material in this bulletin of yours called "The Reporter"?

Mr. Marford. I have stated that I refused to——

Mr. Adamson (interposing). You refuse to answer that question?

Mr. Marford. I have indicated to you the publications committee, and beyond that I feel it is within my province not to furnish you further information at that point concerning the structure of our organization.

Mr. Adamson. Do you refuse to answer that question?

648 Mr. Mundt. He refuses to identify the members of that committee. Is that right? 918

The Chairman. Is that correct?

Mr. Marford. On a basis of principle, you see.

The Chairman. I am not asking about what basis it is. Do you decline to divulge the names of your Publications Committee?

Mr. Marford. I think at this point it is proper for me to indicate that I may not go into the matter further of the internal affairs of the organization.

The Chairman. You do decline to furnish that information?

Mr. Marford. That is the answer that I want to make.

The Chairman. That is not an answer. The point in question has been asked you. You say that this bulletin, which is called The Reporter, which is prepared under the authority of the National Council—I understand you say that the bulletin that is very adequately prepared under the authority of the National Council of American-Soviet Friendship, called "The Reporter" is set broadcast to many people in this nation. Is that right?

Mr. Marford. Yes, subscribers.

The Chairman. How many?

Mr. Marford. I don't know.

The Chairman. A thousand?

Mr. Marford. I don't know.

649 The Chairman. You know how many of 919
them you print? How many are printed?

Mr. Marford. I don't know.

The Chairman. Have you got any idea?

Mr. Marford. It is in the thousands. That is all I know.

The Chairman. And they are sent to whosoever asks for them or that you desire to send them to?

Mr. Marford. That is correct.

The Chairman. Now, you say The Reporter is prepared by the committee of your organization known as the Publications Committee?

Mr. Marford. Yes, sir.

The Chairman. And that publications committee acts under the authority of the National Council of American-Soviet Friendship?

Mr. Marford. That is correct.

The Chairman. And notwithstanding the fact that it is your official publication, disseminated in your interest, as Executive Director of this organization——

Mr. Mundt (interposing). And I might add right there, under Form 3547 of the United States Post Office Department.

The Chairman. Under Form 3547 of the United States Post Office Department, thereby entitling you to reduced postage rates, and you now decline to furnish this committee with the names of that Publications Committee?

650 Mr. Marford. I have been trying to estab- 920
lish the thing—

The Chairman (interposing). You now decline to give that information?

Mr. Marford. I will ask counsel.

Mr. Mundt. All right.

(The witness retired from the hearing room for a short time.)

Mr. Adamson. We will resume now, and let the record show that the witness has returned after conference with his legal counsel, and has resumed the witness stand.

The Chairman. After you have had an opportunity to confer with your counsel I will ask you to please answer the question as to whether or not you decline to give the names of the Publications Committee?

Mr. Marford. Let me come back to this——

The Chairman (interposing). Just answer the question. The question was asked you and you said you desired to confer with your counsel, whether or not you would give us the names of this Publications Committee of your organization. Will you answer that question?

Mr. Marford. May I not insist upon an explanation of the basis of the answer.

Mr. Mundt. Answer the question first, then give your explanation. You can give all the explanation you want to.

Mr. Marford. All right, sir.

The Chairman. Will you answer the question?

651 Mr. Marford. Yes, I will answer the question. Your request is what, sir? 921

The Chairman: For the names of the Publications Committee, names and addresses.

Mr. Marford. I do not think that I can give you the names, sir, of the members of the Publications Committee.

The Chairman. You mean you don't know them, or you refuse to give them?

Mr. Marford. I do know them. I do not wish to give them.

The Chairman. You decline to give them?

Mr. Marford. I decline. This publication is a publication of the Council and will stand on its own merits. I think there is nothing in that statement that in any way can be construed as being un-American or subversive.

We are entitled to an opinion, and under our rights under the First Amendment, and on that basis then, unless you can make a judgment about that this is satisfactory in proving that to be un-American and subversive, then, if it is not false, beyond that it is not our responsibility to furnish further information. It does not make any difference who wrote that particular article or who the particular committee was that stands behind that article.

The Chairman. The question does not refer to any particular article. It refers to an established periodical that you certify you give out periodically.

652 Mr. Marford. As long as the opinions set forth in that periodical are not un-American or subversive, then they may not be questioned beyond that point, as to who wrote them, what particular editorial committee was in charge, or what particular director was on the job at the time of publication. 922

The Chairman: Are there any further questions?

• • • • • • • • •

653 **Opinion**

Indictments under U. S. Code, Title 2, sec. 192, for failure to produce documents subpoenaed by the House Committee on Un-American Activities; and for conspiracy to violate U. S. Code, Title 2, Sec. 192. On motions to dismiss indictments. Motions denied.

• • • • • • • • •

654 In January 1945 the House of Representatives of the United States, by House Resolution No. 5, 79th Congress, 1st Session, created a Committee known as the Committee on Un-American Activities, which was authorized to make investigations of "(1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guar-

anteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The defendants Richard Marford, George Marshall and Helen Bryan, have been indicted under U. S. Code, Title 2, Sec. 192,[1] for failure to comply with subpoenas *duces tecum* issued by the Committee and directing them to produce certain records before the Committee.

655

The indictment against Richard Morford alleges that he was subpoenaed to produce "all books, records, papers and documents showing all the receipts and disbursements of money by the National Council of American-Soviet Friendship, Inc., and all correspondence, memoranda and communications with any and all persons, together with a complete list of all affiliated organizations, for the year 1945."

The indictment against the defendant, George Marshall, alleges that he was subpoenaed to produce "all books, records, documents and correspondence pertaining to the National Federation for Constitutional Liberties relating to the solicitation and disbursement of funds with a list of contributors." This indictment also charges the defendant Marshall with refusal to answer questions as to whether he had any connection with an organization known as the Marshall Foundation.

The indictment against the defendant Helen R. Bryan alleges that she was subpoenaed to produce "all books, ledgers, records and papers relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or subcom-

[1] U. S. Code, Title 2, Sec. 192, reads as follows:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than 12 months."

mittee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries for the period from January 1, 1945, to March 29, 1946."

The indictment against the defendants Edward K. Barsky and others consists of two counts. The first count avers that they were members of the Executive Board of the Joint Anti-Fascist Refugee Committee, and charges them with a conspiracy to defraud the United States
656 by encouraging the defendant Helen R. Bryan to refuse to produce records before the Committee; and further with a conspiracy to violate U. S. Code, Title 2, Sec. 192.

The second count of this indictment charges the defendants with the substantive offense of failure to comply with a subpoena directing them to produce "all books, ledgers, records and papers relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or any subcommittee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries for the period from January 1, 1945, to March 29, 1946."

The defendants now move to dismiss the indictments for alleged failure to state an offense against the United States.

The principal contention advanced by the defendants is that the House Resolution under which the Committee acted, is invalid.

It is elementary that for use in connection with the exercise of its power to legislate and to appropriate funds, the Congress has the authority to secure information. Ordinarily legislation cannot be intelligently enacted without previously ascertaining facts from which conclusions can be drawn as to whether need for legislation exists and, if so, what form the legislation should assume. Similarly, detailed data are necessary in connection with the

appropriation of moneys. Historically the control of the purse is one of the basic and vital functions of the legislative branch of the Government. Whenever necessary or desirable the Congress may secure the requisite facts by study and research, or by procuring information from persons who volunteer it. The Congress, however, is not limited to these sources of knowledge. It has the right to compel the disclosure of factual material. At times this is the only method by which necessary data can be obtained. For this purpose, the Congress may issue subpoenas to require the attendance of witnesses and to exact the production of records and documents. When resort is had to this course, the customary practice is to delegate the duty to a Committee.

657

Manifestly, the sole purpose for which the Congress may carry on investigations and secure information is in connection with the exercise of its legislative function and with the appropration of moneys. It may not, for example, compel the divulgence of information for the purpose of ascertaining whether a crime has been committed as a basis for a criminal prosecution, since this is a matter for the judicary and for the prosecutng officers of the Government. On the other hand, if the same information is desired for use in connection with legislation, the Congress has a right to demand it. The information sought to be secured by a Congressional Committee must be germane to the legislative or the appropriating function.

In connection with the exercise of these powers, however, the Congress is not limited to securing information precisely and directly bearing on some proposed measure, the enactment of which is contemplated or considered. The collection of facts may cover a wide field. Obviously in order to act in an enlightened manner, it may be necessary and desirable for the Congress to become acquainted not only with the precise topic involved in prospective legislation, but also with all matters that may have an indirect bearing on the subject. For

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example, in connection with the regulation of interstate commerce, it may conceivably become desirable for Congress to secure facts bearing solely on some aspects of intrastate commerce. Or, in enacting criminal legislation, it may first become desirable to investigate conditions in States and localities involving violations of local law. In connection with appropriating funds and determining what allotments of moneys should be made, it may become desirable to obtain information covering a wide range. While the power of the Congress to carry on investigations is not without limit, nevertheless, the Congress has broad discretion in determining the subject matter of the study and the scope and extent of the inquiry. If he subject under scrutiny may have any possible relevancy and materiality, no matter how remote, to some possible legislation, it is within the power of the Congress to investigate the matter. Moreover, the relevancy and the materiality of the subject matter must be presumed. The burden is on one who maintains the contrary to establish his contention. It would be intolerable if the judiciary were to intrude into the activities of the legislative branch of the Government, and virtually stop the progress of an investigation, which is intended to secure information that Congress deems necessary and desirable in the proper exercise of its functions, unless the lack of materiality and relevancy of the subject matter is clear and manifest.

The authorities unanimously and conclusively support the foregoing views. Thus, in *McGrain* v. *Daugherty*, 273 U. S. 135, 174-175, Mr. Justice Van Devanter discussed this question as follows:

659 "We are of the opinon that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified. . . .

"A legislative body cannot legislate wisely or effectively in the absence of information respecting the

conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that more requests for such informaton often are unavailing, and also that informaton which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with —enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."

In the cited case the Supreme Court observed that it is not necessary for the Resolution directing the investigation to avow in express terms that it is intended to be in aid of legislation. If it appears that the matter to be investigated is relevant or material to some subject over which the Congress may legislate, or in respect to which it may appropriate funds, the power to conduct the investigation exists.

In the case of *In re Chapman*, 166 U. S. 661, 670, Mr. Chief Justice Fuller, observed that it was not necessary that the Resolution authorizing the investigation should declare in advance what the Congress "meditated doing when the investigation was concluded."

In *Barry* v. *United States ex rel Cunningham*, 279 U. S. 597, 619, Mr. Justice Sutherland stated:

660 "The presumption in favor of regularity, which applies to the proceedings of courts, cannot be denied to the proceedings of the Houses of Congress, when acting upon matters within their constitutional authority."

In *United States* v. *Norris*, 300 U. S. 564, 573, Mr. Justice Roberts stated:

> "That it is within the constitutional province of Congress to institute investigations and to compel evidence with a view to possible exercise of its legislative function . . . is settled."

In a recent case in this jurisdiction, *Townsend* v. *United States*, 68 App. D. C. 223, 226, Mr. Justice Justin Miller in commenting on an objection that the investigating Committee involved in that case never recommended any remedial legislation, made the following observation:

> "This is clearly beside the point. The act for which appellant was indicted occurred before the hearings of the committee were concluded. Its power to conduct a hearing for legislative purposes is not to be measured by recommendations for legislation or their absence."

That the subject of un-American and subversive activities is within the investigating power of the Congress is obvious. Conceivably, information in this field may aid the Congress in legislating concerning any one of many matters, such as correspondence with foreign governments (U. S. Code, Title 18, sec. 5); seditious conspiracy (*Id.* Sec. 6); prohibition of undermining the morale of the armed forces (*Id.* Sec. 9); suppression of advocacy of overthrow of the Government (*Id.* Sec. 19); the registration of organizations carrying on certain types of propaganda (*Id.* Secs. 14 and 15); qualifications for entering and remaining in Government service; the authorization of Governmental radio broadcasts to foreign
661 countries; and other innumerable topics. Similarly such information may be helpful in appropriating funds.

The argument is advanced by counsel that the Resolution is invalid because it relates to freedom of speech, in respect to which the Congress may not legislate. This contention is without merit. Freedom of speech is, in-

deed, one of the fundamental rights of every person in a democracy. It is guaranteed and safeguarded by the First Amendment to the Constitution of the United States and is one of the basic rights of every inhabitant of the United States. No one who has any conception of the meaning of democracy would tolerate any encroachment or inroad on freedom of speech. It is not to be lightly assumed, however, that the Congress will enact legislation repugnant to the Constitution. A presumption of validity attaches to every Act of Congress. The burden of proof is on the person attacking its constitutionality. *A fortiori*, the courts may not presume in advance that the Congress will transgress the Constitution. The courts are not the sole guardians of the Constitution. That duty is shared with the other branches of Government, who are under an equal obligation to observe the limitations of the fundamental instrument. It is not to be presumed that the Congress will ignore its duty. Moreover, the right of freedom of speech is, in itself, a qualified right. The First Amendment does not, for example, preclude the Congress from excluding obscene matter from the mails or from the channels of interstate commerce. It does not guarantee to any one the right to incite others to commit a crime. It does not preclude the Congress from punishing persons who advocate the overthrow of Government by force. It does not bar
662 the Congress from limiting certain activities of Government employees, although similar activities are within the rights of all other citizens. Other limitations on the right of freedom of speech will occur to every thinking person. In any event, information to be obtained by this investigation is not limited in its use to legislation in respect to freedom of speech, but as heretofore indicated, may be utilized in respect to legislation on other subjects.

It is urged further that the Resolution is unconstitutional because it is too indefinite, in that the words "un-

American" and "subversive" are not defined and do not have a precise and well-established meaning. In support of this contention, reliance is placed on the general proposition of law that a panel statute which does not provide an ascertainable standard of guilt is violative of the due process clause of the Fifth Amendment and is, therefore, invalid. This doctrine has been established by a line of cases of which *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, is typical. These decisions, however, are directed solely to penal statutes and relate to the well-known rule of law that no one should be punished criminally for an act which at the time he committed it he was unable to ascertain would be considered a crime. This rule, however, does not apply to statutes of other types.

There is nothing to the contrary in the case of *Kraus & Bros.* v. *United States*, 327 U. S. 614, 620. That case involved the validity of a regulation issued by the Administrator of the Office of Price Administration, to which a criminal sanction was attached. The court held that the regulation was subject to the same test as a penal statute. This line of reasoning, however, does not apply to the Resolution involved in the instant case.

663 No doubt many an Act of Congress may be found in which general terminology is intentionally or unintentionally employed. This is true of the present Resolution. The Committee is directed to investigate un-American and subversive activities. The exact scope of an investigation cannot always be charted and bounded in advance with the prevision of a survey. In conducting a research, an inquiry, or an investigation, some discretion must be left to those to whom the task is entrusted, if the objective is to be attained. If we analyze the words "un-American" and "subversive" as used in the Resolution, there are some activties which everyone will agree are un-American and subversive, and there are others which everyone will place in the opposite group. Between the two extremes, no doubt, there will be some gradations in

respect to which persons may well differ. There may well be differences of opinion as to the exact application or meaning of these terms, or as to whether some particular activity falls in one class or the other. This circumstance does not deprive the Congress of the power to investigate un-American and subversive activities, and for the purposes of carrying out its duties to vest in the investigating Committee the discretion to make a preliminary determination as to what activities are comprized within these two terms.

It is argued, however, that a person who is directed to appear or produce documents before the Commttee may be at sea in endeavoring to determine whether the Committee is acting within its jurisdiction. It must be borne in mind, however, that the statute (U. S. Code, Title 2, Sec. 192) which punishes failure to comply with a
664 subpoena or to answer questions, is definite and makes a willful default a misdemeanor. A person who declines to comply with a direction of the Committee on the basis of a claim that the Resolution creating it is invalid, or that the Committee is exceeding its jurisdiction, acts at his peril. The provisons of an investigating Resolution are not drawn primarily for the benefit of a witness, but are framed for the guidance of the Committee. There are many situations in which a person assumes a risk in determining whether what he intends to do constitutes a crime. This is true, for example, in respect to violations of the anti-trust laws, because what constitutes an illegal restraint of trade is frequently a debatable matter.

In *Nash* v. *United States,* 229 U. S. 373, 377, Mr. Justice Holmes aptly remarked:

> ". . . the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here: he may incur the penalty of death."

In the light of the foregoing considerations, it is the conclusion of this Court that the House Resolution creating the Committee on Un-American Activities is valid.

It is further urged that the subpoenas as set forth in the indictments, are too broad and are, therefore, violative of the Fourth Amendment. Whether a subpoena is too broad cannot always be determined from the terms of the document, but is a mixed question of law and fact. Consequently, the question should not be determined on a motion to dismiss the indictment for insufficiency.

665 It may be observed that each of the subpoenas is limited to documents relating to a specific topic, or is restricted to specified periods, or both. Somewhat similar subpoenas were held valid in *Brown* v. *United States*, 276 U. S. 134, 138; and *Wheeler* v. *United States*, 226 U. S. 478, 483. Moreover, there may conceivably be a question as to whether under the circumstances of this case, the defendants are entitled to assert the privilege guaranteed by the Fourth Amendment, *United States* v. *White*, 322 U. S. 694, 704. These matters can be determined only at the trial on the facts.

Finally, in the case of *United States* v. *Edward K. Barsky et al*, it is urged that the first, or conspiracy count, of the indictment is insufficient in that it charges the defendants with a conspiracy to defraud the Government without, however, averring that the conspiracy was to be effectuated by deceit, craft, or trickery, or by means that are dishonest. Reliance is placed on *Hammerschmidt* v. *United States*, 265 U. S. 182, 188, in support of this objection. The first count of the indictment further charges, however, that the defendants conspired to commit an offense against the United States by violating U. S. Code, Title 2, Sec. 192. Since the allegation last mentioned sets forth a conspiracy that is subject to criminal prosecution, the first count of the indictment is sufficient. Consequently, it is not necessary to determine whether the additional allegations, that are assailed by the defendants, are sufficient if they stood alone.

Motion to dismiss indictments denied. Alternative motions for bills of particulars are also denied.

ALEXANDER HOLTZOFF,
Associate Justice.

May 21, 1947.

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Subpoenas

666 Cr. No. 366-47

To J. HARDIN PETERSON
Room 1226 New House Office Building
Washington 25, D. C.

You are hereby commanded to appear in the District Court of the United States for the District of Columbia at Criminal Court No. One, U. S. District Courthouse, Indiana Avenue between 4th and 5th Sts., N. W. in the city of Washington on the 24th day of February 1948 at 10:00 o'clock A. M. to testify in the case of the United States v. Richard Morford, Criminal No. 366-47.

This subpoena is issued on application of the defendant.

HARRY M. HULL,
Clerk.

By HELEN M. MCINTOSH,
Deputy Clerk.

• • • • • • • • • •

667 Received
Feb. 18, 3:51 P. M. '48
U. S. Marshal

RETURN ON SERVICE

Received this subpoena at Washington, D. C., on 2-18 and on 2-20-48 at Washington, D. C., I served it on the within named T. Hardin Peterson by delivering a copy to him personally protested service due to Congressional immunity.

W. BRUCE MATTHEWS.
By H. MCCAULEY.

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668 CONGRESS OF THE UNITED STATES
House of Representatives
Washington, D. C.
February 20, 1948

Please recite in your return that I protest against the service and please include the following statement in your return:

I object to the service of the witness subpoena and to the subpoena upon the ground that I am a member of the House of Representatives, 80th Congress, of the United States of America; that Congress is in session at the present time and will be in session on the day that the subpoena is returnable and that at the very hour of the return date of the subpoena a committee of the Congress of the United States, of which I am a member, is in session; that to respond to the summons would interfere with the duties as a representative in Congress; that under the Constitution I have no right to respond without the consent of the Congress and that the Congress has not consented to my responding to the subpoena; and that all the facts which may be known to the undersigned regarding the particular case are in the records of the Committee on Un-American Activities.

Respectfully,

J. HARDEN PETERSON,
Member of Congress,
District of Florida.

* * * * * * * * * *

669 Cr. No. 366-47

To John R. Murdock
Room 540 Old House Office Building
Washington 25, D. C.

You are hereby commanded to appear in the District Court of the United States for the District of Columbia at Criminal Court No. One, U. S. District Courthouse, In-

diana Avenue between 4th and 5th Sts., N. W., in the city of Washington on the 24th day of February 1948 at 10:00 o'clock A. M. to testify in the case of the United States v. Richard Morford, Criminal No. 366-47.

This subpoena is issued on application of the defendant.

HARRY M. HULL,
Clerk.
By HELEN M. McINTOSH,
Deputy Clerk.

* * * * * * * * * *

670 Received
Feb. 18, 3:51 P. M. '48
U. S. Marshal

RETURN ON SERVICE

Received this subpoena at Washington, D. C., on 2-18, and on 2-20-48, at Washington, D. C., I served it on the within named John R. Murdock by delivering a copy to him personally protested service due to congressional immunity.

W. BRUCE MATTHEWS.
By H. W. McCAULEY.

* * * * * * * * * *

671 CONGRESS OF THE UNITED STATES
House of Representatives
Washington, D. C.
February 20, 1948

Please recite in your return that I protest against the service and please include the following statement in your return:

I object to the service of the witness subpoena and to the subpoena upon the ground that I am a member of the House of Representatives, 80th Congress, of the United States of America; that Congress is in session at the present time and will be in session on the day that the subpoena is returnable and that at the very hour of the return date

of the subpoena a committee of the Congress of the United States, of which I am a member, is in session; that to respond to the summons would interfere with the duties as a representative in Congress; that under the Constitution I have no right to respond without the consent of the Congress and that the Congress has not consented to my responding to the subpoena; and that all the facts which may be known to the undersigned regarding the particular case are in the records of the Committee on Un-American Activities.

Respectfully,

JOHN R. MURDOCK,
Member of Congress,
At-large District of Arizona.

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Subpoena Duces Tecum

676 The President of the United States to John Andrews, Clerk of the House of Representatives, P-42 United States Capitol, Washington, D. C.

You are hereby commanded to attend the said Court on Monday, the 15th day of March, 1948, at 10 o'clock A. M., to testify on behalf of the defendant, and bring with you the documentary material described in Schedule A attached hereto and made a part hereof consisting of 5 pages, which documents are in the files of the Committee on Un-American Activities, and not depart the Court without leave thereof.

Witness, The Honorable Chief Justice of said Court, the 10th day of March, A. D. 1948.

HARRY M. HULL,
Clerk.
By MARGARET L. BOSWELL,
Deputy Clerk.

CHARLES A. HORSKY,
Attorney for Richard Morford.

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677 **Schedule A**

Annexed to Subpoena

1. Letter dated November 19, 1945, from Corliss Lamont to Ernie Adamson, Counsel.

2. Letter from Corliss Lamont to Ernie Adamson, Counsel, dated November 27, 1945.

3. Letter dated November 27, 1945, from Corliss Lamont to John S. Wood, Chairman of the House Committee on Un-American Activities, and similar letters of the same date to John E. Rankin, J. Parnell Thomas, J. Hardin Peterson, Karl E. Mundt, J. W. Robinson, Gerald W. Landis, John R. Murdock, Herbert C. Bonner, the Members of the House Committee on Un-American Activities.

4. Letter dated December 6, 1945, from Corliss Lamont to John S. Wood, Chairman.

5. Letter dated December 9, 1945, from Corliss Lamont to John S. Wood, Chairman.

6. Letter dated December 9, 1945 from Corliss Lamont to John E. Rankin, Member of the House Committee on Un-American Activities, and similar letters of the same date to J. Parnell Thomas, J. Hardin Peterson, Karl E. Mundt, J. W. Robinson, Gerald W. Landis, John R. Murdock, Herbert C. Bonner, the other Members of the Committee.

7. Copies of letter dated December 9, 1945, from Corliss Lamont to Sam Rayburn, Speaker of the House, sent to John S. Wood, Chairman, and John E. Rankin, J. Parnell Thomas, J. Hardin Peterson, Karl E. Mundt, J. W. Robinson, Gerald W. Landis, John R. Murdock, Herbert C. Bonner, Members of the Committee.

8. Copy of letter dated December 14, 1945, from Ernie Adamson, Counsel, to Carl Dreher, Bald Hill Road, Wilton, Connecticut.

9. Copy of letter dated December 14, 1945, from Ernie Adamson, Counsel, to American Civil Liberties Union.

10. Copy of letter dated December 20, 1945, from Ernie

Adamson, Counsel, to Mr. and Mrs. Robert Lippin, 40 Monroe Street, New York, New York.

11. Letter dated January 10, 1946, from Corliss Lamont to John S. Wood, Chairman.

12. Copy of letter dated January 19, 1946, from Karl E. Mundt, Member of the Committee, to Mr. Norman W. Schur, Chairman, National Committee to Combat Anti-Semitism, 22 East 17th Street, New York, New York.

678 13. Letter dated February 8, 1946, from Corliss Lamont to John S. Wood, Chairman, and similar letters of the same date to John E. Rankin, J. Parnell Thomas, J. Hardin Peterson, Karl E. Mundt, J. W. Robinson, Gerald W. Landis, John R. Murdock, Herbert C. Bonner, Members of the Committee.

14. Letter dated February 19, 1946, from Corliss Lamont to Karl E. Mundt, Member of the Committee.

15. Minutes of all meetings of the House Committee on Un-American Activities or any subcommittee thereof between January 3, 1945, and February 6, 1946, at which investigation of the National Council of American-Soviet Friendship, Inc., was considered, referred to, acted upon, or its propaganda activities were discussed, and transcripts of any testimony taken about or concerning the National Council of American-Soviet Friendship, Inc., during that period.

16. Transcript of the testimony of Corliss Lamont before the Committee on February 6, 1946.

17. All releases and statements issued by or on behalf of the House Committee on Un-American Activities, whether to the press or otherwise, between November 13, 1945, and August 3, 1946, which refer to or discuss the National Council of American-Soviet Friendship, Inc.

18. All publications and documents relating to the National Council of American-Soviet Friendship, Inc., submitted to the House Committee on Un-American Activities between January 1, 1946, and March 15, 1946, by Corliss Lamont and by Richard Morford, together with all state-

ments submitted to the Committee by said individuals, in connection with their appearances before said Committee.

19. Transcripts of Committee meetings or executive sessions after 11:15 A. M. March 7 to June 13, 1946, at which the Committee considered and/or acted upon the refusal of Richard Morford to produce documents and/or to answer any questions.

20. All card records and all compilations, and all documentary material upon which said records and compilations are based, concerning the National Council of American-Soviet Friendship, Inc., and Corliss Lamont and Richard Morford which the House Committee on Un-American Activities had in its possession on or before August 1, 1946.

21. Letter from Carl Dreher to Ernie Adamson of December 19, 1945.

22. Letter from Frederic G. Melcher, President, Publisher's Weegly, to John S. Wood of December 11, 1945.

679 23. Letter from John Rothschild to John S. Wood or the Committee of December 17, 1945.

24. Minutes and transcripts of hearings of the Committee at which Corliss Lamont appeared and concerning the National Council of American-Soviet Friendship held on January 23, 1946, and January 24, 1946, A. M.

25. Minutes and transcript of meeting and executive session of Committee on February 6, 1946.

26. Minutes and transcripts of Committee meetings or executive sessions between November 27, 1945, and December 3, 1945, relating to the National Council of American-Soviet Friendship, Inc., including but not limited to, action of the Committee directing or instructing the Chairman to request access to the books and records of said Council.

27. Report of an investigator of the Committee referred to by Congressman Thomas during Congressional debate on June 26, 1946, appearing at 92 Cong. Rec. 7721 (June 26, 1946), which report contained references to Corliss Lamont.

28. The evidence referred to by Congressman Rankin during Congressional debate on June 26, 1946, appearing at 92 Cong. Rec. 7728 (June 26, 1946), which allegedly establishes an alliance between the National Council of American-Soviet Friendship, Inc., and the traitor who tried in the United States and Canada to steal the secrets of the atomic bomb.

29. Letter from Norman W. Schur to Karl E. Mundt and/or other Members of the Committee dated January 7, 1946.

30. Committee Resolution adopted on or before May 28, 1946, directing the compilation of material entitled "Citations by Official Federal Government or State or Municipal Agencies or Reliable Private Organizations Regarding the Character of the Organization Named", which compilation has been published under date of May 29, 1946.

31. Letter dated December 12, 1945, from Arthur Garfield Hays and Roger Baldwin to John S. Wood, Chairman.

32. Copy of letter dated December 27, 1945, from Ernie Adamson, Counsel, to National Committee to Combat Anti-Semitism, Room 601, 22 East 17th Street, New York, New York, together with copy of petition by said National Committee, referred to in said letter.

680 33. Copy of letter dated March 22, 1946, from Ernie Adamson, Counsel, to Mr. Stanley B. Moss, % Moss and Arnold, 7 East 44th Street, New York, New York, together with copy of New York Times advertisement referred to therein.

34. Copy of letter dated between February and August, 1946, from John S. Wood, Chairman, to all members of Congress enclosing copy of report of Committee on Un-American Activities and summarizing its work and policy.

35. Letter from Clyde Doyle, Representative from California, to Ernie Adamson, Counsel, dated July 17, 1946.

36. Copy of letter dated July 18, 1946, from Ernie Adamson, Counsel, to Clyde Doyle, Representative from California.

37. Copies of letter sent by Karl E. Mundt, Member of the Committee, to Governor Thomas L. Bailey (Mississippi) and approximately 99 others on or about January 20, 1945, relating to a "suitable and working criterion to determine what does and what does not comprise an un-American activity", together with the "data sheet" mailed therewith and all replies received thereto, and all further correspondence with the same individuals in connection therewith and such additional correspondence received from other individuals and/or organizations pertaining to the establishment of the "working criterion" above set forth as to the definition of the terms "un-American" and/or "subversive".

38. Copies of all letters sent by or on behalf of the Committee or by any members thereof to The Brookings Institution between January 3, 1945, and April 15, 1945, relating to a working criterion for determining what constitutes un-American propaganda or activity, or relating to standards for determining what constitutes un-American activities, or relating to the definition of the terms "un-American" or "subversive", or relating to an analysis of letters received purporting to define un-American activities or propaganda; together with all letters received from the Brookings Institution in connection therewith.

39. The Report or memorandum submitted to the Committee by The Brookings Institution between January 3, 1945, and April 15, 1945, relating to or entitled "Suggested Standards for Determining Un-American Activities", and other data and material submitted in connection therewith.

681 40. Memorandum of six paragraphs sent to the Committee or to Karl E. Mundt, Committee Member, by the American Civil Liberties Union during February, 1945, relating to un-American activities, and letter accompanying same.

41. Stenographic transcript of all meetings of the House Committee on Un-American Activities or any subcommit-

tee of the same from January 3, 1945, to February 6, 1946, at which the definition or content of the phrase "un-American or subversive propaganda activities" was considered, discussed or acted upon.

42. All releases and statements issued by or on behalf of the House Committee on Un-American Activities between January 3, 1945, and January 4, 1947, whether to the press or otherwise which refer to or comment upon the investigation of organizations, groups, or individuals who are engaged in issuing propaganda or in influencing or attempting to influence public opinion.

43. Press release on or about June 22, 1945, by the House Committee on Un-American Activities or its Chairman dealing with the definition by said Committee of the words "un-American" and/or "subversive".

44. Each and every item listed under the column "publication" in connection with the Committee record of Clifford (T) M'Avoy as contained in Extension of Remarks of Honorable Hadwen C. Fuller, dated August 2, 1946, appearing at 92 Cong. Rec. A5230 (August 12, 1946).

45. Each and every item listed under the column "source" in connection with the Committee record of Corliss Lamont as put into the Record during Congressional debate by Representative J. Parnell Thomas on June 26, 1946, appearing at 92 Cong. Rec. 7722 (June 26, 1946).

46. Each and every item of source material in connection with the Committee record of Clyde R. Miller as contained in the speech of Hon. J. Parnell Thomas, dated February 19, 1946, appearing at 92 Cong. Rec. A888 (February 19, 1946).

47. Each and every item listed under the column "source" in connection with the Committee record of Michael J. Quill as contained in the Extension of Remarks of the Hon. J. Jarnell Thomas, dated February 27, 1946, appearing at 92 Cong. Rec. A1065 (February 27, 1946).

48. Each and every item of source material in connection with the Committee record of Margaret Webster and Edwin

S. Smith as contained in the report of Louis J. Russell, investigator entitled "Comprehensive Report Concerning Publications Issued by the National Council of American-Soviet Friendship, Inc." under the headings "The American Theatre" and "Pamphlet Entitled 'Organized Labor in the Soviet Union' ", respectively, together with the Committee record on Frederic March referred to under the heading "American Theatre" in said report and the supporting items of source material in possession of the Committee; said report was made part of the Committee Record on March 6, 1946 beginning at page 926A.

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678 Filed Mar. 12, 1948

Motion by the Defendant to Postpone Date of Trial

Comes now the defendant and moves the Court to postpone the trial of the above-named case from Monday, March 15, 1948 to such time as may follow by a period of not more than one week the date of adjournment of the present session of Congress, and for reasons states the following:

Defendant has issued subpoenas in this case to the following named Members of Congress as defense witnesses:

Congressman Hart of New Jersey
Congressman Wood of Georgia
Congressman Peterson of Florida
Congressman Bonner of North Carolina
Congressman Murdock of Arizona
Congressman Landis of Indiana
Congressman Mundt of South Dakota
Congressman Thomas of New Jersey
Congressman Rankin of Mississippi.

These witnesses are vital in order to enable defendant adequately to present his defense and to avoid a serious miscarriage of justice.

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675 "that all the facts which may be known to the undersigned regarding the particular case are in the records of the Committee on Un-American Activities."

Respectfully submitted,

CHARLES A. HORSKY,
WILBUR LESTER,
ABRAHAM J. ISSERMAN,
Counsel for the Defendant.

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II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS.

Proceedings.

The Deputy Clerk: The case of Richard Morford.

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Motion to Postpone Trial

Mr. Horsky: There is a motion I have handed Mr. Murray privately, and which is in the file.

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To continue this case until after Congress has adjourned. The basis for the motion is set out in it.

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3 Mr. Horsky: • • •

Moreover, I have been engaged in a continuous struggle for the last month and a half to try and obtain the documents which we need for our defense.

4 I have served subpoenas on the chairman of the committee, on the clerk of the committee, and finally on the Clerk of the House.

I have been in negotiation with Chairman Michener of the House Judiciary Committee, in an attempt to obtain a resolution of the House which would permit equal access to the files of the House committee by both the prosecu-

tion and defense for relevant materials in this case. The House has not yet acted, although I have had several conversations with Chairman Michener about it. Whether they will act or not, I, of course, have no way of knowing. Whether, if they act, they will act in favor of releasing the documents, I have no way of knowing.

It was presented to the House for its action in the case of Mr. Marshall about 10 days ago, and my conversations with Mr. Michener at that time related to the possibility of a resolution by the House which would cover both of these cases, avoid duplication of trouble in the House.

However, when no resolution was forthcoming, I served a new subpoena in this case on the Clerk of the House, which, by the rules, would necessarily be reported to the Speaker.

The House has not been in session since that time, and Mr. Andrews, who is here in court this morning pursuant to the subpoena, has informed me it will be presented to the House this morning.

As it stands now, the defendants have not been able to get, and have been assured by the United States Attorney that they will not have, absent House permission, a single document from any source, from any of the files of the House Committee on Un-American activities.

For those reasons, partly because Congressmen apparently will not show up during this trial while Congress is in session, and partly because the House has not yet acted to make available to us any of the documents, we are necessarily precluded from defendant's defense here by way of documentary proof, or by way of oral testimony, and I think to require us to proceed under those circumstances would require us to proceed without possibly getting justice.

The Court: You are not ready, then, for trial, is that it?

Mr. Horsky: With what I have said, I don't see how I can be.

Mr. Murray: If the Court please, I think a brief statement of the case is relevant to this discussion, because it will be material to the merits of the motion, what it is that the defense claims it lacks by reason of the failure to obtain the witnesses and the documents referred to.

* * * * * * * * * * *

6 Mr. Murray: The charges are two. The first count charges that the defendant, Richard Morford, was summoned by the Committee on Un-American Activities of the House of Representatives to produce before it records of the organization of which he was Executive Director, known as the National Council of American-Soviet Friendship, which records were upon the matter under inquiry before that committee, that is, were pertinent
7 to the investigation of that committee, and that he appeared and did not produce those records.

The second count charges that on the same appearance he was asked the pertinent question who were the members of the Publications Committee of that organization which published a paper known as The Reporter, which was of interest to the committee in its investigation, and he refused to answer that pertinent question.

Those are the charges the Government expects to prove. The Government expects to produce the chairman of the Committee on Un-American Activities, that is, the chairman at the time, Congressman John S. Wood of Georgia, who conducted the hearing, and who was presiding as chairman when Mr. Morford appeared before the committee.

We expect to show that the records called for were pertinent, and that the question asked was pertinent, on the basis of what? On the basis of information which the committee had received, which we will contend justified it in believing, as it did believe, that this organization might be engaged in subversive propaganda activities, and was therefore a proper subject for the investigation of the House committee.

The information by which they were persuaded, and on which they formed that belief was obtained, we will show, from an organization, a public organization in New York City, which is supported by the Community Chest, and which gives information about fund-collecting organizations as a public service to those who subscribe to that organization, which is known as the Information Bureau.

The House committee got from that Information Bureau a statement regarding this organization, in which it was pointed out that it was a corporation, and that one of its stated purposes was, and we have here named—one of the stated purposes of this organization was to take specific action against anti-Soviet propaganda which tends to disrupt the United Nations, or some such expression.

The name of the organization, this stated purpose, and this other information which I am about to state, were the bases for the belief, we expect to show, and the reasonableness of it, which the committee had, and on which they had a legal right to issue the subpoena, and many justices in this court have previously ruled that an honest and reasonable belief on the part of the committee—of an investigating committee—will justify it in moving against or moving into the affairs of a particular organization, and on this belief that this organization's activities bring it within the proper scope of the committee's investigation.

In addition to what I have stated, the name of the organization, and its stated purposes, to take specific action against anti-Soviet propaganda, we expect to show, if anything, in addition, only different publications which this organization itself turned over to the committee as an example of what the organization contended was its non-subversive propaganda activities.

We expect to show from excerpts from those publications, if they are produced, that the publications themselves strengthened the belief and made its reasonableness more apparent that this organization was publicly engaged in

pro-Soviet, and, therefore, subversive propaganda activities.

Now, that is the basis for our show of pertinency: First, information from an organization in New York that would give it to anybody that would pay for it. Secondly, the publications which this organization itself turned over.

* * * * * * * * * * *

10 The defendant wanted this committee to dump its entire file having the slightest reference, direct or collateral, to this organization or to any individuals connected with it, to dump that entire file into the court room.

Some of that documentary evidence the defense sought in that subpoena was plainly irrelevant, as was argued before.

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* * * I think before they should be permitted to postpone this trial, which is now two years since the happening, and one year since the indictment, before that be done, I

11 think they ought to show clearly what they expect to show in defense of the case I have outlined of the Government, what they expect to show by the production of these witnesses and evidence which couldn't be shown now.

They certainly have their own publications, and they certainly know what their charter stated the purposes of their organization were, and it is on that basis we rely for a proof of pertinency.

* * * * * * * * * * *

12 Mr. Horsky: * * *

If, as Mr. Murray has not contradicted, we have no access to the records of the committee of any sort, we will attempt by secondary evidence as best we can to prove the correspondence with these men—by these men

13 with this organization. We would, of course, like to have them here to identify their own correspondence.

Secondly, we have things which these gentlemen have written or published about the issue which is critical in this

case, the nature of the committee's activities, and the nature of this organization, not necessarily communications to the organization, but communications about the organization.

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14 Mr. Horsky: Much of it we submitted to the committee and can't get it back. We submitted to the committee in response to this subpoena a great deal of information; we have not been able to recover a bit of it for purposes of analysis at the trial or for purposes of checking what the committee has got or hasn't got.

The Court: Like what?

Mr. Horsky: We submitted a stack of material this high (indicating), material which we contended was not un-American and subversive, all the propaganda material we had ever issued, a complete set. So far as I know, that is the only complete set there is, or practically so, and we have not been able to get that back from the committee to analyze it for your Honor to show you it is not subversive and un-American, as Mr. Murray says it is. We have no access to it. Mr. Murray says he will pull out excerpts. We haven't the material, can't get it from the committee, to show you it is misconstrued, or that he is pulling out excerpts which are perhaps miscopied, or anything else. We haven't got that material.

15 On the record Mr. Murray has himself said he is going to use records of the committee, he is going to use some New York organization's information, he is going to use the materials which this organization submitted to the committee, he is apparently going to use the documents which the committee thinks show that it had some ground to believe this organization was engaged in subversive and un-American propaganda.

He is not going to permit us an iota of evidence to controvert that, to show what the committee has that negatives that, that must have convinced them it was not engaged in subversive and un-American propaganda. That is one of the issues in this case, and we can't possibly submit to go

to trial with just what Mr. Murray wants to put in the record out of this committee's files.

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17 * * * We haven't even got a complete transcript of what happened when this man testified. We have been refused it upon subpoenas. The subpoenas have been honored not even to that extent.

* * * * * * * * * * *

18 * * * We have three issues upon which we are in sharp conflict with the Government, issues of fact, on which we intend to base Constitutional arguments. We have urged before Justice Holtzoff in this case that there is in this resolution when combined with the statutes under which this defendant is prosecuted no sufficient standard of guilt to warrant a conviction.

The basis for that, without going into all of the authorities and the reason, is that the resolution requires as a key word throughout that the committee investigate un-American propaganda.

The Court: That doesn't involve this matter of a continuance, does it?

Mr. Horsky: Yes, sir. I will explain why in just one or two minutes.

The statute requires the witness answer only pertinent questions. The witness must, therefore, decide what pertinent is, based on the resolution, and as un-American has no meaning which anyone can ascribe to it, we contend he is denied due process under the Cohen case and others which require a standard of guilt.

Now, before Justice Holtzoff we argued that question based on judicial notice as we were limited to it.

We will try here to prove not only what we can show you by way of judicial notice, but by the proof from the committee's own words, their own activities, that it, itself,

19 has no standard of what is un-American.

It has no definition, and this defendant not only could not have found the definition by looking for it in what

was known and public, even if he had had the committee's activities, and had known what they mean, he wouldn't have been able to define un-American, and, hence, make a decision as to whether the question asked him was pertinent or not.

It is clear, of course, your Honor, if the question is not pertinent, he may stand without any crime. The committee is empowered, or, rather, the statute makes out a crime only on a failure to answer a pertinent question.

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Mr. Horsky: The next issue arises out of a question of constitutionality which we propose to urge before your Honor, and which I know was not raised in the Barsky case, because we propose to show that, as is apparent from the subpoena here, and the question, that this subpoena was issued, and that this question was asked solely to obtain names of members of the organization and of the members of the Publications Committee to add to a black list of organizations and members which this committee illegally and unconstitutionally, and in violation and in excess of its authority maintains.

We are prepared to show, as a matter of fact, the committee beyond any matter of investigating was engaging in a wholly non-investigating, wholly unauthorized activity of preparing this black list. It was prepared without notice, without investigation, without standards, without opportunity to be heard.

It is made as a matter of routine, and assumes guilt by association, as a matter of course, it is secret, except as we will show the committee makes it available to Congressmen, in occasional reports to Government agencies, to private employers and public officials, and occasionally to the general public by way of releases to the press or in privileged speeches on the floor of the House.

We are prepared to show this black list is used, and, in fact, its principal purpose, if not its sole purpose, is to hamper and restrict the work of organizations and individuals with whom the committee disagrees, and

destroy reputations, and also to harm their livelihood in either public or private employment.

We are prepared to show this is not theoretical for this defendant, because this committee, even before calling for the names from this witness, and even before calling for the records of this organization, had placed the National Council on its black list, that it had used that to attack the National Council, persons connected with it, and, in turn, other organizations with which persons connected with the National Council were connected.

And we will show inevitably the matter would have gone to swell the committee's acknowledged million names by a few more.

We will show this concept of guilt by association dominates the committee's attitude, its investigations, and its black list.

All of this we are prepared to show, and to a very considerable extent from the witnesses who are not here, and from the documents we have not been able to obtain by subpoena.

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24 There is a fourth issue of fact which is somewhat related to the third issue, upon which we are also prepared to prove facts which require both these witnesses and some of the documents which we have subpoenaed.

25 We are prepared to show and will show through the witnesses and the documents that the committee is not only engaged in the compilation of this black list, but but that it is setting itself up as a censor over all forms of speech and assembly, which a majority of its members as a committee happen to oppose.

We are prepared to show that this committee is not considering legislation and doesn't devote itself to legislating, but concerns itself as an administrative agency within the legislative branch criticizing and driving out of public life, depriving of public support, people it doesn't agree with.

We are prepared to show this committee has boasted of this fact, its power to drive radio commentators off the air, out of their jobs, drive movie people to drop a movie, to deprive organizations of financial support.

We are prepared to show through these witnesses and through these documents we have thus far been unable to get, that the committee has set itself up to eradicate what it calls undesirables, and they include people who speak with a foreign accent, and all sorts of people who have nothing at all against them except the committee doesn't like them.

We are prepared to show this is its principal purpose—

Mr. Murray: (Interposing) Your Honor, I am sorry, I don't like to interrupt this argument, but if I may be permitted at this time to do so, I should like to comment—

Mr. Horsky: (Interposing) You asked me to
26 make a statement of my purpose.

Mr. Murray: I understand the Court was asking for facts, not generalities.

Mr. Horsky: These are facts.

Mr. Murray: If I said I would prove these records are pertinent and sat down, I would be doing exactly what Mr. Horsky is doing now. I said not only would we prove the records are pertinent, but I detailed the evidence by which we would prove it. I called upon Mr. Horsky, and I understand the Court is interested to have pointed out what facts, what correspondence, what does it say, what facts are you going to show to dispute the Government's evidence of pertinence.

I didn't intend to answer the argument at this time. This is an interruption. I will make it brief. Every argument that Mr. Horsky has stated so far was argued in extenso by other counsel in another case, and that case is on appeal now, and it is on appeal because of adverse rulings to these contentions, and the Josephson case passed on in the Second Circuit, in which certiorari was denied, disposes, in my opinion, of many of the points Mr. Horsky is stating. These

same things were urged and urged very violently in the Barsky case, that the committee was attempting to form a black list, and for that reason the Joint Anti-Fascist
27 Committee would not submit its records of expenditures and lists to the Committee on Un-American Activities, but the fact is if they had done so when they were called upon to do so, and if that list of expenditures had been a correct list, it would have shown that that organization had Gerhart Eisler on its payroll, so the committee is not always barking up the wrong tree, and it is not to be presumed to be engaged in forming a black list, but in forming—in obtaining and taking action upon a red list of those whom it has a right to investigate.

I am sorry, I did not intend to get into a whole argument, but I do believe the entire argument Mr. Horsky has made so far is subject to the criticism it goes into generalities, where the Government's argument has answered what it is going to prove, and how it is going to prove it.

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44 Mr. Isserman: • • •

And I would like to say a word about the question of documents. Many questions would be obviated if we had certain documents which we think are indispensable; the resolution of the committee on the definition of un-Americanism, for instance, and at this moment the request for documents, following the rules of the House, is in possession of Mr. Andrews, who told us this morning that he was presenting it to the Speaker, and from what we have learned about procedure, including what Mr. Horsky has obtained, we understand it is the practice of the Speaker to present the subpoena request to the House as transmitted to the Speaker by the Clerk. Now, that request will be before the House today. We do not know that the House will act upon it today. We do not know that the House will act upon it at all. We do know that a similar request was filed in the case of George Marshall some ten days ago and is awaiting action, but we have expectation, and our expectation is

based only on the equity of the matter and statements made in connection with the testimony of witnesses, we expect that Congress could say that the files of the committee shall be available to both sides to the extent that to the Court seems relevant. It seems to us to be a reasonable request, and one that is highly appropriate.

45 Now, this case cannot be tried without documents that the committee has. Mr. Murray will get all the documents he needs, we take it, and we feel that we should also have the documents, and until the House acts, or fails to act, we think that this matter should be held by Your Honor to abide that result.

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50 Mr. Murray: * * *

Although the Government has the right to choose by what evidence it will prove its case, the defense has the right to cross examine the witnesses produced and to call for a full production of documentary evidence, a part of which only may be submitted.

If we bring down here a little statement of a publication, as Mr. Horsky was saying I was going to do, and then have all the witnesses read one statement out of the whole publication and say that the committee read that statement and considered it was subversive propaganda then, of

51 course, on cross examination that witness could be asked other things about that statement, and if the statement was in documentary form, as some of them are, the documents ought to be available to the defendant to cross examine the witness on, and called to the Court's attention for the purpose of showing that that particular statement has been taken out of its context by the committee and, therefore, has been misinterpreted. If we attempt to show a part of the document the whole should come in, and if not, it should be stricken, but to say that examination of the material is shown on which the committee found its conclusion to issue this subpoena requires the committee to dump its entire files over to the defense is quite a different

thing, and that is why I stated with particularity, and I repeat it was with particularity, what the Government is to rely on to prove pertinency in this case, the statement of the organization within its corporate charter, plus possible publications, and I mean all of them contained within this statement which the committee believed to be subversive, and which we will argue to the Court on reading of them, that they were subversive statements like this, for instance, that even on questions of procedure the Soviet Government has been in a much better position than the United States Government. Now, the committee thought that that was subversive. It may be that if five other pages of that Reporter are read some of the sting may go out of
52 that, but proceeding in the initial stage it was an issue of suspicion, and I would argue upon that point alone that the committee had a right to call for the records of this organization showing where it got its money, and who it was giving it to, and for what purposes.

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53 Mr. Horsky: * * *

One further fact; I understand from what Mr. Murray said that there is no congressional privilege of these documents. He has documents apparently
54 which we could not get because I have searched the record and if there is no congressional privilege perhaps Your Honor can resolve the problem by ruling that those records can be brought here.

The Court: The only thing before me is a motion to postpone the trial of this case.

Mr. Horsky: One of the reasons to postpone, as stated in the motion, is that the documents are not available. If Your Honor makes them available that drops out.

The Court: Are you finished on the motion?

Mr. Horsky: I think so.

The Court: The motion to postpone is denied.

* * * * * * * * * * *

Motion to Dismiss Indictment

56 Mr. Horsky: I should like at this time to renew the motions which were made shortly after the indictment was handed up, and which we argued before Justice Holtzoff and on which he wrote an opinion.

The Court: Has a Judge of this Court already ruled on what you are going to present to me?

Mr. Horsky: In part, yes, and in part, no. I cannot answer it more specifically than that. In the two motions which were argued before Justice Holtzoff, on one of them he specifically reserved it for Your Honor, and that was the motion to dismiss Count 1 because it was based upon an invalid subpoena. His opinion said that was a matter for the Trial Court and could not be determined then.

The Court: He meant during the trial?

Mr. Horsky: He said—

The Court (interposing): Has he ruled on it?

Mr. Horsky: He said it will require evidence and I would like to reserve making that motion. We think we would have to have evidence, and then make it to Your Honor.

The Court: Very well.

Mr. Horsky: And the second motion which he did rule upon—

57 The Court (interposing): Which he did or did not?

Mr. Horsky: Did.

The Court: Well, I do not want to hear that if he ruled on it.

What is the third one?

Mr. Horsky: I want to explain about that motion he ruled upon. We want to present evidence on that and make a full record on the facts and I would like to reserve that motion until the evidence is in.

The Court: Very well.

Mr. Horsky: And the other motion, a second motion was, and I can describe it as a motion to dismiss the entire indictment on the ground that Resolution 5 of the Seventy-

ninth Congress does not provide the ascertainable standard of guilt required by the Fifth and Sixth Amendments to the Constitution.

The Court: This matter has been presented to a member of this Court and he has already ruled on it, and that is sufficient.

Mr. Horsky: I would like to state it for the purpose of the record so it will indicate the grounds.

I move that the indictment be dismissed as fatally vague, uncertain, and indefinite in that:

A. The first count does not show that the documents alleged summoned or subpoenaed were material to the matter under inquiry, nor does it set forth the facts upon
58 which such materiality is based. The second count shows neither the precise question allegedly asked nor the precise manner in which the defendant alleged refused to answer.

B. The indictment does not state an offense against the United States in that the scope of investigation committed to the House Committee on Un-American Activities by House Resolution 5 of the Seventy-ninth Congress is not judicially ascertainable, and the pertinency of any question or document is not determinable by the Court.

C. The indictment does not state an offense against the United States in that the scope of the investigation committed by the Seventy-ninth Congress to the Committee on Un-American Activities in House Resolution 5 is indefinable and so indefinite and sweeping that the attempts of the Committee on Un-American Activities to compel the defendant under the threat of criminal prosecution to produce the documents referred to in the first count of the indictment and to answer the question referred to in the second count of the same, are beyond the constitutional powers of Congress.

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59 I have one additional motion which is based upon that which became available through that bill of par-

ticulars. I wish to make that motion and argue it to you. This argument goes only to Count 2 of the indictment.

The bill of particulars was filed by the United States in two steps, the first bill of particulars stating an answer to some questions, and then ten days later or thereabouts, a supplemental bill of particulars, which contains some of the questions and answers referred to in the indictment, and upon which it is alleged that the defendant committed this crime.

Exhibit B of the bill of particulars, or the supplemental bill of particulars, relates to the questions and answers asked this defendant with respect to the publication committee upon which Count 2 is based.

This bill of particulars reads this way, with Mr. Adamson, who is the counsel of the committee, not one of the members, discussing a publication of the National Council known as the Reporter, and he called to the defendant's attention to a statement in the issue of October 15, 1945, and this is at page 1 of the supplemental bill of particulars, and he called attention to a particular statement in that bulletin or that Reporter, which said, and it is quoted: "The Soviet case"—I should read the full question.

"On October 15, 1945, in discussing the procedural
60 discussions at meetings between the three great powers, that is, Great Britain, United States and Russia, your bulletin goes on to say: 'The Soviet case, even on the issue of procedure, stands out far better than the position of the United States.' "

Then there is considerable colloquy between Mr. Adamson and the defendant, and on page 3 of the supplemental bill of particulars, the defendant states that this is written by a publication committee.

Mr. Adamson thereupon asks, still on page 3: "Who is the committee?"

This is the question upon which the defendant is being prosecuted for failure to answer, and that forms the basis of Count 2 of the indictment, and on the basis of this bill

of particulars which I now, as I take it before the Court as if they were in the indictment itself, I think Count 2 should be dismissed on its face as indicating that the basis for the question or the question itself was not pertinent to any question properly before this committee.

* * * * * * * * * * *

69 The Court: I will deny the motion.

Motion to Exclude Government Workers From Jury

Mr. Horsky: Before the jury is called, may I request you to exclude Government workers from it under the circumstances of this case?

The Court: That is denied.

Mr. Horsky: Would you care to hear any argument on it at all? May I have an exception to that ruling?

The Court: Yes. You may exercise challenges you deem proper.

Mr. Horsky: The jury list indicates I cannot exclude all Government workers with three challenges.

The Court: Very well.

Mr. Horsky: Is my position adequately protected on the grounds of my request? Is my position sufficiently protected on the record?

The Court: The record shows you requested it
70 and it has been denied.

Mr. Horsky: Aren't you interested in the grounds upon which it is made?

The Court: Call the jury panel.

(Thereupon the jury panel returned into the courtroom.)

(Thereupon the jury was sworn on voir dire examination.)

Mr. Isserman: We have some questions we would like to submit. One section in the latter portion deals exclusively with jurors in Government work (handing a paper writing to the Court.)

110-A **Questions for the Jury Panel**

1. Does any member of the panel know Mr. Murray, Assistant District Attorney, who is assigned to prosecute this case, or anyone else in the District Attorney's Office?

2. Has any member of the panel formed any opinion as to the guilt or innocence of the defendant?

3. Does any member of the panel know any Congressmen who are now or who have been members of the House Committee on Un-American Activities?

110-B 4. Does any member of the panel know any employee or member of the staff of the House Committee on Un-American Activities?

5. Does any member of the panel know any person who works or has worked as an investigator or undercover man for the House Committee on Un-American Activities?

6. Has any member of the panel testified before or given information to the House Committee on Un-American Activities?

7. Does any member of the panel know any person who has testified before or given information to the House Committee on Un-American Activities?

8. Has any member of the panel read transcripts of hearings or reports of the House Committee on Un-American Activities?

9. Is any member of the panel or any member of his family friendly with, related to or associated with any person who is now or ever has been associated with the Federal Bureau of Investigation?

10. Does any member of this panel know any employee of this court?

11. This case involves an officer of the National Council of American-Soviet Friendship, Inc., (the purpose of which is to promote friendship between the U.S.A. and the U.S.S.R.), on a charge of contempt of the House Committee on Un-American Activities. In the light of these

110-C facts, do you believe that if you were selected as a

juror and you came to the conclusion that a verdict of not guilty was required, that this would embarrass you in your employment?

12. Because of the nature of this case, do you believe that if you were selected as a juror and you came to the conclusion that a verdict of not guilty was required, that this would embarrass you in your business realtionships?

13. Because of the nature of this case, do you believe that if you were selected as a juror and you came to the conclusion that a verdict of not guilty was required, that this would embarrass you in any political or any other organization of which you are a member?

14. Because of the nature of this case, do you believe that if you were selected as a juror and you came to the conclusion that a verdict of not guilty was required, that this would embarrass you among your family, friends or acquaintances?

15. Is any member of the panel engaged in business, a profession or trade concerned with Government employees to any substantial extent, whether patrons, clientele or customers?

16. Is any member of the panel an employee of the Government?

17. Is any member of the panel an applicant for a 110-D position with the Government?

18. Is any member of the immediate family of any member of this panel a Government employee or an applicant for a Government position?

19. Is any member of the panel or a member of his immediate family associated with, or has any member been associated with, any agency, either public or private, engaged in detection of law violations?

20. Is any member of the panel or a member of his immediate family associated with any person who is now associated with any agency of law enforcement?

21. Are any members of the panel or members of their immediate family receiving pensions or other benefits from the Government or any of its agencies?

22. Does any reason suggest itself to any one of you why you should not sit as jurors in this case and render a fair and impartial verdict solely on the evidence and under the instructions as to the law given by the Court?

23. Have you heard or read anything about this case?

24. Is any member of the panel or a member of his immediate family a present or former member of any of the following organizations?

Americans for Democratic Action

. . . . . .

110-E National Economic Council
Small Businessmen's Association
Christian Front
America First Committee
National Committee to Keep Out of Foreign Wars
Constitutional Educational League
We The Mothers
Coalition of Patriotic Societies
Ku Klux Klan
American Anti-Communist Association
Knights of Columbus
American Legion
Columbians, Inc.

25. Is there any member of the panel, or member of his immediate family, a member of or affiliated with any organization, society, lodge or fraternity which by resolution or otherwise has taken a position opposing cooperation or friendship between the United States and the Soviet Union?

26. Is there any member of the panel, or member of his immediate family, a member of or affiliated with any organization, society, lodge or fraternity which by resolution or otherwise has denounced the Soviet Union or its policies?

27. Is any member of the panel opposed to cooperation or

friendship between the United States and the Soviet Union?

28. Has any member of the panel denounced or
110-F approved of the denunciation of the Soviet Union?

29. Has any member of the panel read any of the following papers or periodicals: The New Leader, The Militant, The Tablet, The Cross and Flag, The Crusader, The New York Enquirer, The New York World Telegram, The Washington Times-Herald?

30. Has any member of the panel listened to the radio broadcasts of Henry F. Taylor, or Fulton Lewis, Jr.?

31. Has any member of the panel read or discussed any matters either in the newspapers or in any books or Government publications relating to the National Council of American-Soviet Friendship, Inc.?

32. Would your judgment of the defendant's guilt or innocence be affected by the fact that the defendant has criticized the House Committee on Un-American Activities?

33. Would your judgment of the defendant's guilt or innocence be affected by the fact that the proceedings against the defendant which resulted in this trial were initiated by the House Committee on Un-American Activities?

34. Would your judgment of the defendant's guilt or innocence be affected by the fact that the defendant and the organization of which he is an official has on occasion expressed criticism of U. S. policy toward the Soviet Union?

35. Does any member of the panel believe that persons
or orgainzations within the United States who ex-
110-G press such criticism are un-American or subversive?

36. Has any member of the panel read any articles or heard any lectures or sermons condemning individuals or organizations in this country who criticize U. S. policy toward the Soviet Union?

37. Does any member of the panel have any prejudice against any individual or orgainzation who in sympathetic

fashion publishes facts about conditions of life and work in the Soviet Union?

GOVERNMENT WORKERS

38. In what department or service are you employed?

39. How long have you worked there?

40. In connection with your work, have you been questioned about alleged subversive activities or persons or organizations engaged in such activities by any person in authority?

41. Have you had any discussions with other employees on questions concerning subversive activities or persons or organizations engaged in such activities?

42. Have you ever been questioned by your superiors or by persons in authority on alleged subversive activities or persons or organizations engaged in such activities?

43. Have you ever been questioned by investigators of the Civil Service Commission?

110-H 44. Have you ever been questioned by investigators of the Federal Bureau of Investigation?

45. Have you ever been questioned by investigators of the Department of Justice?

46. Have you ever been questioned by investigators of the department in which you work?

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47. Have you read or heard about the Presidential Executive Order which provides for the investigation and purge of Government workers for alleged disloyalty?

48. Have you discussed the P sidential Order?

49. Do you know that at present a loyalty check of Government workers is being conducted pursuant to the Executive Order of the President?

50. Do you know that in connection with such loyalty check, investigations of Government employees are being conducted?

51. Do you know that in connection with such loyalty check, a Loyalty Review Board has been appointed and is functioning?

52. Do you know that in connection with such loyalty check the Attorney General of the United States has published a list of subversive groups and organizations which is used in connection with such checks?

110-I 53. Have you read or seen the Attorney General's list in the newspapers or elsewhere?

54. Have you discussed the organizations on that list with anyone?

55. Pursuant to the Executive Order providing for a loyalty check of Government employees, the records and files of the House Committee on Un-American Activities are to be used in the investigation of Government employees. In view of that fact and the fact that the House Committee on Un-American Activities initiated the proceedings which resulted in this trial, have you any fear that if you were required on the evidence in this case to acquit the defendant, that your action in so doing might prejudice you in any way in your Government employment?

56. Would you have any fear, in view of the above, that your vote for acquittal in favor of the defendant may some day be used against you in your work or elsewhere, or subject you to criticism or ridicule in any way in connection therewith?

57. Friendly or sympathetic association with persons or organizations engaged in alleged subversive activities is a ground for discharge under the President's Executive Order. In view of this fact, do you or do you not believe that because of the nature of this case, if you found the defendant not guilty you might be charged with disloyalty and prejudice your job?

110-J 58. Do you believe it part of your obligation as a Government employee to be hostile to persons or organizations engaged in alleged subversive activities?

59. Have you, as a result of the Executive Order on loyalty or for any other reason, developed a prejudice against alleged persons or organizations engaged in alleged subversive activities as listed by the Attorney General?

60. Would your employment by the Government make you influenced in any way to the Government's side of the case as against the defendant?

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70 The Court: I will deny number 10.

That is a matter of proof, the purpose of this association, so I will strike that question.

Mr. Isserman: Which number was that?

The Court: Number 11.

57 is denied.

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74 The Court: I don't think 35 is proper.

Mr. Murray: I object to 35.

Mr. Isserman: You are ruling out 35?

The Court: That is right.

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75 The Court: 47, 48 and 49 go out.

50 goes out and 51 goes out.

Mr. Isserman: 50 is out and 51?

The Court: Yes, they are out.

52 is out. 11, 12, 13, 14, and 15, are out.

53 and 54—55 is out. How about 53 and 54?

Mr. Isserman: 53 is based on 52.

The Court: I understand that but 52 is out and 53 is in or I will put it out. I will change it if you want.

Have you read the Attorney General's list?

Mr. Isserman: From what?

The Court: The loyalty check. Have you read--you say this is on the list, this organization?

Mr. Isserman: Yes, sir.

The Court: We will change it. 55 is out.

57 is out. 56 would be putting in fear. 56 is out.
58 is out and 59 is out, and 60 remains.

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76 Mr. Isserman: May I state for the record that the National Council of American-Soviet Friendship, Inc., of which the defendant is executive director, was named by the Attorney General on the list of alleged subversive organizations.

The Court: I am going to ask them that question, if they know who is on the list. If they haven't read the list, they don't know.

Mr. Isserman: I would like it indicated.

The Court: No, I am not going to make any reference.

Mr. Isserman: We would like to indicate this for the record, and I state the list was to be used in connection with the loyalty check of employees under Presidential Executive Order.

The Court: Very well.

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Mr. Isserman: We ask the questions addressed to government workers be addressed to them outside of the
77 presence of the other jurors.

The Court: No, I will not do that.

Mr. Isserman: May I explain the reason?

The Court: Yes.

Mr. Isserman: The reason is we have to question the Government workers of their knowledge of the existence of the list and by asking questions of them.

The Court: Only if they answer in the affirmative, that they have seen the list.

Mr. Isserman: The question itself may suggest to some jurors the existence of a list, and I think that we should have the right to do that, and we have considered the problem very carefully, and we feel—

The Court (interposing): I will ask the whole panel whether they have seen that list.

Mr. Isserman: We prefer that question not to be asked that way.

The Court: I will do one of two things: I will ask the entire panel about that list or ask the Government employee about this list, and I am not going to separate these jurors and question them piecemeal. You can do whichever way you want.

Mr. Isserman: May we confer on that for a moment, because may want to withdraw the question.

78 The Court: Certainly.

Mr. Isserman: In view of the Court's ruling, we prefer that question 52 be not asked of any jurors.

The Court: You mean 53, about the Attorney General's list?

Mr. Isserman: Yes; 53.

The Court: All right. 54 automatically comes out.

Mr. Isserman: That is right; 54. We are in the same position on question 54.

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86 The Court: Counsel for the defense have requested certain questions be asked of the prospective panel, which the Court has granted, and I will ask those questions.

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87 The Court: Is any member of the panel opposed to cooperation or friendship between the United States and the Soviet Union?

Juror Courter: As an economist, I believe it is

88 impossible.

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90 The Court: The following questions are for those on the panel who have indicated that they are employees of the United States Government.

Mr. Hill, in what department are you employed?

Juror Hill. Internal Revenue.

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91 The Court: Mr. Courter, where are you employed?

Juror Courter: With the Securities and Exchange Commission.

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The Court: Mr. James?

Juror James: Bolling Field, D. C.

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92 The Court: Mr. Jackson?

Juror Jackson: National Gallery of Art; been there eight years.

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94 The Court:

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Pick the jury.

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The Deputy Clerk: Jurors please answer as your names are called and take your places in the jury box.

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95 The Deputy Clerk: Anson Courter.

The Deputy Marshal: Two.

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The Deputy Clerk: Clarence Hill.

The Deputy Marshal: Number six.

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The Deputy Clerk: Willie Jackson.

The Deputy Marshal: Number eight.

The Deputy Clerk. David James.

The Deputy Marshal: Number nine.

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97 Mr. Isserman: The second challenge for cause we are about to make is Juror No. 2.

The Court: Why for cause, because he says in his opinion as an economist there can't be friendly relations between the United States and Russia?

Mr. Isserman: If Your Honor doesn't allow it for cause, I would like to question him further.

The Court: What is the further question?

. . . . . .

98 Mr. Isserman: I would like to ask him whether because of his expressed view he harbors any prejudice against an organization which works for American-Soviet friendship.

The Court: Suppose he says yes, what?

Mr. Isserman: We would then ask he be removed for cause on that ground. Your Honor will not grant that, that I question also whether he isn't prejudiced against any such organization, and a series of further questions that suggest themselves, depending on his answer?

. . . . . .

100 The Court: . . .

Your other challenge for cause is Juror No. 2, Mr. Courter.

Mr. Murray: The one who said cooperation between the governments was impossible?

The Court: Yes, he is an economist, and he thought it would be—that challenge for cause is denied.

Mr. Murray: There was a request for a further

101 question to him.

The Court: I will grant the further question.

. . . . . .

Mr. Isserman: May we have the opportunity to prepare some additional questions on both Juror 2 and 12?

The Court: No, I am not going to have—you can ask them right now, through me. What are they? No. 2, you have told me that.

Mr. Isserman: There may be some other questions, depending on his answer. If Your Honor wants me, I can extemporaneously note a number of questions.

The Court: I am not going to use up a number of questions. I am getting a jury this afternoon in this matter.

Mr. Isserman: The man has indicated.

The Court: I am not going into this question of somebody heard a broadcast about Soviet Russia, or because a person doesn't believe, because of his economic views—

Mr. Isserman: What we would like to do is pursue that further to see whether his economic views will affect this particular situation.

The Court: I will allow that.

Mr. Courter, is it?

Mr. Courter: Yes.

The Court: Juror No. 2, you answered Question No. 27 in your opinion as an economist—

102 Mr. Courter: Yes.

The Court: —friendship between the Soviet and the United States is impossible.

Mr. Courter: May I state that I am simply stating that over a long period of time the ultimate consequence of the economics of Engels and Marx would lead to the necessity of any country holding those views subjugating the United States or any other political division.

The Court: My question to you is because of your opinion based upon it as an economist that would be impossible, would that prejudice you against this defendant here?

Mr. Courter: I don't think so. I have equally strong opinions about some members of the Un-American Committee.

The Court: Very well.

Mr. Courter: Which I could disassociate myself from.

Mr. Isserman: What was the last?

The Court: He has just as many strong opinions about members of the Committee on Un-American Activities.

. . . . . .

108 The Court: Have you any peremptory challenges?

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Mr. Isserman: If the Court please, the defense asks that Juror No. 10 be excused.

109 The Court: Mr. Jessen, you are excused.

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Mr. Isserman: If the Court please, may we have Juror No. 1 excused.

The Deputy Clerk: Della Lowe, Juror No. 1, you are excused from serving on this panel.

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110 Mr. Isserman: If the Court please, may Juror No. 12 be excused?

The Court: Very well.

The Deputy Clerk: Rafael Nieves, Juror No. 12, you are excused from serving on this panel.

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John W. Carrington was called as a witness on behalf of the United States:

(Minority clerk of House Committee on Un-American Activities)

122 Mr. Murray: Your Honor, I am prepared to offer it. I understand counsel have objections to make. I do now offer in evidence Government's Exhibit No. 3.

Mr. Horsky: May I ask one or two preliminary questions before stating the objection?

Mr. Carrington, is that a record from the files of the Committee on Un-American Activities?

The Witness: Yes, sir.

Mr. Horsky: By whose authority did you get it from the files?

The Witness: This was—

Mr. Murray: Just a moment. I object to that question. I don't think it is relevant in connection with the identification of an exhibit.

123 The Court: I will sustain the objection.

Mr. Horsky: I object to the admission in evidence of this exhibit on two grounds, Your Honor.

First, that it is unauthoriz d –that it isn't the authorized production here in court of the document of the committee according to the rules as we have been told they apply.

Second, we object to it on the ground it is an invalid request upon this defendant.

We will have evidence to introduce on that subject in accordance with the instructions of Mr. Justice Holtzoff. I don't wish to introduce that evidence now unless Your Honor would care to have that done at this time. So long as my objection to it on that ground is preserved, I don't object to the introduction.

The Court: It may be admitted and your objection is preserved.

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127 By Mr. Murray:

Q. Mr. Carrington, from the group of papers you have just brought into court, I have taken these which I now show to you which are marked Government's Exhibits 4 to 10, inclusive, and ask you whether they are from the files of the Committee on Un-American Activities of the House of Representatives? A. Yes, sir, they are.

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128 Mr. Murray: Your Honor, the papers which I have had identified are, as far as I know, the only ones which the Government proposes to make use of, but the witness has produced this envelope containing other papers, and if the defendant may want to make use of them, I shall now ask the witness this general question.

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129 By Mr. Murray:

Q. Mr. Carrington, all the papers which were contained in this manila envelope which has just been marked Government's Exhibit 11 were from the files of the committee? A. Yes, sir.

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135 Q. You have been shown, Mr. Carrington, Government's Exhibits 4 to 10, which have been marked for identification and I believe your testimony was that they were taken from the committee files? A. That is correct.

Q. Now, you took them from committee files at whose instructions, can you tell us? A. From the chairman.

136 Q. And who was the chairman of the committee? A. John S. Wood, Congressman John S. Wood.

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John S. Wood was called as a witness on behalf of the United States.

139 By Mr. Murray:

Q. Mr. Wood, your full name is John S. Wood? A. Yes, sir.

Q. And you are Member of Congress from what State, sir? A. Georgia.

140 Q. How long have you been a member of Congress, Congressman Wood? A. Altogether?

Q. Yes, sir. A. Seven and a fraction years.

Q. Are you a member now of the Committee on Un-American Activities of the House of Representatives? A. I am.

Q. And were you chairman of that committee at one time? A. Yes, sir.

Q. What period, sir? A. From July, 1945, until January 1, 1947.

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142 Q. Did you conduct the hearing at which Mr. Morford appeared? A. I did. I participated in it. The chief counsel did some of the questioning, and some other members of the committee did some, but I was the chief interrogator.

Q. Did you conduct the hearing, did you preside? A. I did.

Q. By the way, do you recognize Mr. Morford in court here? A. Yes, sir, I believe that is him, right over there.

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